

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 737 of 2000

For Approval and Signature:

Hon'ble MR.JUSTICE A.L.DAVE

- =====
1. Whether Reporters of Local Papers may be allowed : NO
to see the judgements?
 2. To be referred to the Reporter or not? : NO
 3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
 4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the Civil Judge? : NO

HEMCHANDRA @ RAMCHANDRA

SHANKARRAO GHADGE

Versus

STATE OF GUJARAT

Appearance:

MS SUBHADRA G PATEL for Petitioner

MR KT DAVE, AGP for Respondent No. 1, 2, 3

CORAM : MR.JUSTICE A.L.DAVE

Date of decision: 11/04/2000

ORAL JUDGEMENT

#. Commissioner of Police, Baroda City, Baroda, passed an order on October 23, 1999, in exercise of powers under section 3 (1) of the Gujarat Prevention of Anti-Social Activities Act, 1985 ("PASA Act" for short), detaining Hemchandra @ Ramchandra Shankarrao Ghadge under the

provisions of the PASA Act.

#. The detaining authority took into consideration three offences registered against the detenu with Vadi Police Station and Navapura Police Station under the various provisions of Indian Penal Code. The authority also took into consideration the statements of three witnesses, whose identity has not been disclosed by the detaining authority in exercise of powers under section 9(2) of the PASA Act. The authority recorded a satisfaction about the correctness and genuineness of the statements made by the witnesses and the fear expressed by the witnesses qua the petitioner-detenu. The authority found the same to be correct and genuine and therefore, came to conclusion that the identity of the witnesses is required to be given shelter of anonymity as the fear expressed by them is genuine. The petitioner was branded as "dangerous person" considering his activities. The authority also recorded that the powers are required to be exercised in public interest.

#. The detaining authority considered the possibility of resorting to less drastic remedies under the provisions of general laws. The authority observed that the detenu is required to be immediately prevented from pursuing his illegal and anti-social activities detrimental to public order. Resorting to other less drastic remedies may not prove to be efficacious and therefore, the petitioner is required to be immediately detained under the provisions of the PASA Act.

#. The detenu - petitioner challenges the order of detention on various grounds. Ms. Patel, learned advocate, appearing for the petitioner contended that there is improper exercise of powers under section 9(2) of the PASA Act in respect of the anonymous witnesses. She submitted further that the offences registered against the petitioner do not relate to any public order situation. She submitted that there is delay in passing the order. She further submitted that a representation was made to the detaining authority on 1st February, 2000, which was received by the detaining authority on 2nd February, 2000. The petitioner has not received any communication. Therefore, there is delay in considering the representation. She further submitted that the detenu had demanded certain documents in respect of CR No. 131/99, which are not supplied. According to Ms. Patel, there is no contemporaneous material to indicate proper exercise of powers under section 9(2) of the PASA Act. She submitted that the petition be allowed.

#. Mr. K.T. Dave, learned AGP, appearing for the respondents has opposed this petition. According to him, there is no delay in passing the order. He submitted that the representation was received by the State Government through the detaining authority on 5th February, 2000 and it was decided on 9th February. 6th February, 2000 was a holiday and therefore, there is no delay in considering the representation. He however, submitted that the representation was rejected and documents demanded in the representation have not been supplied. He urged that the petition may therefore be dismissed.

#. Having regard to rival side contentions, it appears from the grounds of detention that three offences were registered against the detainee and statements of three witnesses were recorded on 5th, 6th and 7th September, 1999. They have been verified by the detaining authority on October 21, 1999 and the order came to be passed on 23rd October, 1999. It has been urged on behalf of the petitioner that the powers exercised by the detaining authority are not properly exercised. The exercise required to be undertaken by the authority before exercising these powers does not appear to have been undertaken and there appears to be some substance in the submission made on behalf of the petitioner. The detaining authority has not filed any affidavit-in-reply nor is there any contemporaneous material to indicate the undertaking of exercise by the detaining authority to consider the aspects of background, character, antecedents etc. of the detainee and to indicate the fixing of priority between the interest/right of the detainee of making an effective representation on one hand and public interest on the other. Thus, it cannot be said that the powers under section 9(2) of the PASA Act is exercised properly (1981 22 GLR 1186 Bai Amina w/o Ibrahim Abdul Rahim Alla v. State of Gujarat). No reliance therefore, can be placed on anonymous witnesses as grounds of detention.

#. Coming to the offences registered against the detainee, it appears that a representation was made on behalf of the detainee and certain documents in respect of CR No. 113/99 of Vadi Police Station were demanded. Without dispute, the said documents have not been supplied. The right of the detainee of making an effective representation qua this offence can therefore, be said to have been infringed.

#. So far as other two offences are concerned, namely Vadi Police Station No. 144/96 and Navapura Police

Station No. 16/98 are concerned, a perusal of the documents furnished to the detenu and relied upon by the detaining authority indicate that they relate to more or less law and order situation and not public order situation. Nothing emerges from these papers to indicate any disturbance or prejudice to the public order situation. Under the circumstances, the subjective satisfaction recorded by the detaining authority that the activities of the petitioner are detrimental to public order and therefore, he is required to be detained is in the absence of any foundation. Under the circumstances, the petition deserves to be allowed.

#. The petition is allowed. The impugned order of detention dated October 23, 1999 is hereby quashed and set aside. The detenu - Hemchandra @ Ramchandra Shankarrao Ghadge is ordered to be set at liberty forthwith, if not required in any other matter. Rule is made absolute with no order as to costs.

[A.L. DAVE, J.]

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